

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**STEPHEN CHRISTOPHER
PLUNKETT, GDC #1001543904,**

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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Civil Action No. **3:20-CV-640-L**

ORDER

On July 9, 2020, United States Magistrate Judge Irma Carrillo Ramirez entered her Findings, Conclusions, and Recommendation (“Report”) (Doc. 40), recommending that the court deny Movant Stephen Christopher Plunkett’s (“Movant” or “Mr. Plunkett”) Motion for Certificate of Appealability for Discretionary Review Application Pursuant to 28 U.S.C. § 1292(b) (Doc. 39) with respect to her April 22, 2020 Order (Doc. 20). Specifically, Magistrate Judge Ramirez determined that for the same reasons set forth in her April 22, 2020 Order, denying Mr. Plunkett’s Motion to Disqualify Pursuant to 28 U.S.C. § 144 (Doc. 17), his Motion for Certificate of Appealability should also be denied. She further states that there is no basis under 28 U.S.C. § 2253(c) or Federal Rule of Appellate Procedure 22(b) for a certificate of appealability at this stage of the proceedings, and that Mr. Plunkett fails to set forth allegations in accordance with Section 1292(b) to warrant the requested relief.

On July 27, 2020, Mr. Plunkett filed his Motion for Reconsideration of April 22, 2020 Order and Objections to and Appeal of Findings, Conclusions, and Recommendation of United States Magistrate Judge (“Objections”) (Doc. 47).¹ Mr. Plunkett asserts objections to Magistrate

¹ Mr. Plunkett deposited his objections in the prison mail on July 20, 2020 (*see* doc. 47); thus, his objections were timely filed pursuant to the mailbox rule.

Judge Ramirez's April 22, 2020 Order and contends that she failed to consider the basis for his motion to disqualify under Section 144 and only considered his alternative request for relief under 28 U.S.C. § 455. He further contends that he asserted these same objections in his Notice of Appeal (Doc. 28), filed May 12, 2020, which he asserts was incorrectly construed as an interlocutory appeal to the Fifth Circuit when it was intended to be an appeal to the district court.² Movant's Obj. 2. He then proceeds to reiterate his substantive objections to Magistrate Judge Ramirez's April 22, 2020 Order as asserted in his May 12, 2020 Notice of Appeal (Doc. 28). With respect to his motion for certification, Mr. Plunkett contends that certification under Section 1292(b) is warranted because Magistrate Judge Ramirez erred in not considering his motion to disqualify under Section 144, which is a controlling question of law.

On August 5, 2020, Magistrate Judge Ramirez entered an order (Doc. 50), granting Mr. Plunkett's motion for reconsideration (Doc. 47) but denying relief under Section 144, as she found that he presented no valid grounds for disqualification under this provision. Mr. Plunkett filed a notice of appeal to the district judge on August 25, 2020 (Doc. 57), asserting the same objections previously presented on this issue.

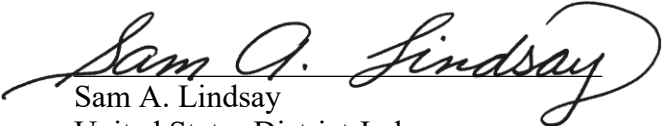
With respect to the Magistrate Judge's Report regarding Mr. Plunkett's Motion for Certificate of Appealability (Doc. 39), the court determines, in accordance with the Magistrate Judge, that he has failed to set forth allegations that meet the criteria set forth in Section 1292(b). Thus, he has failed to demonstrate his entitlement to a certificate of appealability at this stage of the proceedings for the reasons articulated by the Magistrate Judge in her Report (Doc. 40) and August 5, 2020 Order (Doc. 50).

² Despite Mr. Plunkett's assertions, the intent of his Notice of Appeal is unclear, as he contends that the Magistrate Judge's April 22, 2020 order should be reversed or overruled, or, alternatively, that the issue should be forwarded to the Fifth Circuit for immediate review. Movant's Notice of Appeal, Doc. 28 at 4.

Thus, having considered the motion, record, Report, and applicable law, and having conducted a de novo review of the portions of the Report to which Objections were made, the court **determines** that the findings and conclusions of the Magistrate Judge are correct, and **accepts** them, as supplemented by her order of August 5, 2020 (Doc. 50), as those of the court. Accordingly, Mr. Plunkett's Objections (Doc. 47) are **overruled**, and his Motion for Certificate of Appealability for Discretionary Review Application Pursuant to 28 U.S.C. § 1292(b) (Doc. 39), with respect to the Magistrate Judge's April 22, 2020 order (Doc. 20), is **denied**.

Additionally, to the extent Mr. Plunkett seeks to appeal the Magistrate Judge's Order of August 5, 2020, regarding his request for reconsideration of the April 22, 2020 order, the court **overrules** his objections for the same reasons articulated by the Magistrate Judge in her Report (Doc. 40) and Order of August 5, 2020 (Doc. 50).

It is so ordered this 28th day of December, 2020.


Sam A. Lindsay
United States District Judge